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17 SAMSUNG ELECTRONICS CO., LTD.

18 Plaintiff,

19 v.

20 BROADCOM INC., BROADCOM
21 CORPORATION, AND AVAGO
22 TECHNOLOGIES INTERNATIONAL
23 SALES PTE. LIMITED,

24 Defendants.

17 CASE NO. 3:24-cv-03959-LB

18 **DEFENDANTS' ADMINISTRATIVE**
MOTION TO FILE UNDER SEAL
PORTIONS OF THEIR MOTION TO
DISMISS AND SUPPORTING
EXHIBITS

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendants Broadcom, Inc., Broadcom
 3 Corporation and Avago Technologies International Sales Pte. Limited (collectively, “Broadcom”)
 4 respectfully submit this Administrative Motion to File Under Seal. Broadcom submits this Motion,
 5 along with the supporting Declaration of Philip Blum (“Blum Declaration”), to file under seal
 6 portions of its Motion to Dismiss Plaintiff Samsung Electronics Co., Ltd.’s Complaint (“Motion
 7 to Dismiss”) and two supporting exhibits because these materials contain certain competitively
 8 sensitive, highly confidential information. Public release of the information contained in these
 9 materials would create a real and immediate risk of competitive harm to Broadcom by providing
 10 its competitors as well as negotiating counterparties an unfair advantage in understanding
 11 Broadcom’s negotiating positions. Broadcom therefore respectfully requests that the Court enter
 12 an order to seal the information described below.

13 **II. LEGAL STANDARD**

14 “[A] trial court has broad discretion to permit sealing of court documents for, *inter alia*, the
 15 protection of ‘a trade secret or other confidential research, development, or commercial
 16 information.’” *GPNE Corp. v. Apple Inc.*, No. 12-cv-02885, 2015 WL 4381244, at *1 (N.D. Cal.
 17 July 16, 2015) (quoting Fed. R. Civ. P. 26(c)(1)(G)). Where the information sought to be sealed
 18 is attached to dispositive motions or otherwise more than “tangentially related” to the merits of a
 19 case, the presumption favors public access, and there must be “compelling reasons” to seal the
 20 information at issue. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179–80 (9th Cir.
 21 2006). Documents filed in relation to a motion to dismiss need to have “compelling reasons” for
 22 sealing. *Nicolosi Distributing, Inc. v. Finishmaster, Inc.*, No. 18-cv-03587-BLF, 2018 WL
 23 10758114, at *2 (N.D. Cal. Aug. 28, 2018).

24 Compelling reasons that justify sealing exist where disclosure of “business information . . .
 25 might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
 26 598 (1978); *see also Doe v. Meta Platforms, Inc.*, No. 22-cv-03580, 2022 WL 17970394, at *2
 27 (N.D. Cal. Dec. 21, 2022) (“The disclosure of business information that could create competitive
 28 harm is a compelling reason to seal.”) (collecting cases). Courts in this District and in the Ninth

1 Circuit have consistently permitted sealing of competitively sensitive information such as the kinds
 2 of contracts and contract terms at issue here. *See, e.g., Nicolosi*, 2018 WL 10758114, at *2 (finding
 3 compelling reasons to seal three contracts because they contain “potential trade secrets and
 4 business practices, such as product rates and purchase requirements,” and “if these contracts are
 5 publicly available, competitors could use the information included therein to undercut [movant]
 6 on the market.”); *Pace Anti-Piracy, Inc. v. Inside Secure*, No. 17-cv-06744, 2018 WL 10517182,
 7 at *2–3 (N.D. Cal. Jan. 8, 2018) (finding compelling reasons to seal license agreement underlying
 8 the dispute, which contains “commercially sensitive and confidential information” regarding the
 9 “structure and amount” of various royalty, licensing, evaluation, subscription, maintenance,
 10 engineering, and other fees); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (finding
 11 that under *Kamakana* and *Nixon*, district court erred as a matter of law by concluding that movant
 12 failed to meet the compelling reasons standard, because “pricing terms, royalty rates, and
 13 guaranteed minimum payment terms” in licensing agreement “give[] [movant] an opportunity to
 14 obtain an advantage over competitors who do not know or use it” and therefore constitute trade
 15 secrets).

16 **III. BROADCOM HAS COMPELLING REASONS FOR SEALING**

17 **A. Broadcom Has a Strong Interest in Sealing**

18 Broadcom respectfully requests that the Court seal portions of its Motion to Dismiss and
 19 supporting exhibits, because these documents contain Broadcom’s non-public, highly confidential
 20 business information reflecting the contractual terms it has entered into. Exhibit A is a Strategic
 21 Agreement between Samsung and Broadcom, which contains numerous highly confidential,
 22 specifically negotiated business terms, including those that affect pricing, proprietary technical
 23 support, commitments with respect to intellectual property transfer, and other terms relating to the
 24 supply of certain components produced by Broadcom. *See* Declaration of Philip Blum (“Blum
 25 Decl.”) ¶ 4. The terms of the Strategic Agreement itself are protected by an NDA between
 26 Samsung and Broadcom. *Id.* Exhibit B is the Termination Agreement executed by Samsung and
 27 Broadcom, which is also a negotiated agreement between the parties. *Id.* ¶ 5. Certain portions of
 28 Broadcom’s Motion to Dismiss discuss and quote the highly confidential and proprietary terms of

1 both the Strategic Agreement and Termination Agreement.

2 **B. Broadcom Would Suffer Irreparable Injury from Public Disclosure**

3 Broadcom and its customers and counterparties (such as Samsung) maintain the details of
 4 their business relationships and contracts in the strictest confidence and would be harmed by public
 5 disclosure of this information, particularly to competitors and to future counterparties such as
 6 customers and suppliers. *Id.* ¶ 6. Competitors could use the disclosure of pricing or other terms
 7 to try to negotiate deals that would undercut Broadcom's agreements, and place Broadcom at
 8 significant competitive disadvantages relative to its competitors when negotiating future deals and
 9 agreements. *Id.* Future counterparties could gain a negotiating advantage by identifying the
 10 baseline terms that they believe Broadcom might be open to in the future, and cause Broadcom
 11 significant harm such as lower profitability. *Id.* Competitors and future counterparties would gain
 12 insight into Broadcom's closely-guarded business strategies and competitive decision making and
 13 be armed with the strategies Broadcom uses to maintain and enhance its competitive standing and
 14 could change their own business practices in response, which would threaten Broadcom's
 15 competitive position in the marketplace. *Id.* Sealing such information subject to an NDA
 16 "prevent[s] competitors from gaining insight into the parties' business model and strategy." *See*
 17 *In re Qualcomm Litig.*, No. 17-cv-00108, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017).

18 **C. Broadcom Has No Less Restrictive Alternatives**

19 Broadcom has endeavored to be as narrow as possible with its requests for sealing,
 20 including only those portions of the Motion to Dismiss that discuss in any detail the Strategic
 21 Agreement and the Termination Agreement. As set forth below, the limited sealing that Broadcom
 22 requests is narrowly tailored to encompass only the specific portions of, and exhibits to, the Motion
 23 to Dismiss that legitimately qualify as Broadcom's highly confidential and proprietary business
 24 information, while preserving the substance of Broadcom's Motion to Dismiss arguments for the
 25 public record. *See In re Qualcomm Litig.*, 2017 WL 5176922, at *2 (finding limited sealing in
 26 relation to a motion to dismiss "do[es] not impede upon the public' ability to understand the nature
 27 of the proceedings and the factual basis for the parties' claim"). The terms of the Strategic
 28 Agreement and Termination Agreement are some of the most commercially sensitive information

1 Broadcom maintains, such that there are no less restrictive alternatives available to protect the
 2 information that Broadcom seeks to file under seal. Blum Decl. ¶ 6. Broadcom therefore asks the
 3 Court to seal this non-public, competitively sensitive information as disclosed in the chart below:

Document	Portion(s) to Seal	Basis for Sealing
Broadcom's Motion to Dismiss Plaintiff's Complaint	Highlighted portions at 1:5, 5:8–9, 5:23–25, 5:26, 5:27, 5:28, 6:1, 6:2–3, 6:4–5, 6:8–11, 6:13–23, 6:24, 14:28, 15:1–2, 16:9–12, 18:24–28, 19:1–4, 23:8–13, 23:14–15.	Blum Decl. ¶¶ 4–6.
Exhibit A to the Declaration of Aaron T. Chiu in support of Broadcom's Motion to Dismiss	Entirety	Blum Decl. ¶¶ 4, 6.
Exhibit B to the Declaration of Aaron T. Chiu in support of Broadcom's Motion to Dismiss	Entirety	Blum Decl. ¶¶ 5, 6.

IV. CONCLUSION

For the foregoing reasons, Broadcom respectfully requests that the Court seal the identified information.

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 Christopher S. Yates

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